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09/719,338	01/17/2001	James Westphal	1313/1E290-US2	7143

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EXAMINER

ANDERSON, CATHARINE L

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 08/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/719,338

Applicant(s)

WESTPHAL ET AL.

Examiner

C. Lynne Anderson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2003 and 27 February 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 January 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 27 February 2003 has been entered.

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: Reference numeral 16 is not mentioned in the specification. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the distribution zone surface" in lines 4-5. There is insufficient antecedent basis for this limitation in the claim. A distribution zone surface is not disclosed in the claim until line 9.

Claim 1 recites the limitation "said upper layer" in line 5. There is insufficient antecedent basis for this limitation in the claim. Previously, an upper fibrous layer was disclosed.

Claim 5 recites the limitation "said upper layer" in line 2. There is insufficient antecedent basis for this limitation in the claim. Previously, an upper fibrous layer was disclosed.

Claim 6 recites the limitation "the lower storage layer" in line 2. There is insufficient antecedent basis for this limitation in the claim. Previously, said storage layer was disclosed.

***Claim Rejections - 35 USC § 102***

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

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Claims 1, 2, 5, and 6 are rejected under 35 U.S.C. 102(e) as being anticipated by Koczab (5,879,344).

Koczab discloses a unitary absorbent structure, as shown in figure 3, comprising an upper fibrous layer having a liquid acquisition zone 2 and a liquid distribution zone 3, as shown in figure 4. The structure further comprises a lower fibrous liquid storage layer 12 in fluid communication with the distribution zone 3. The storage layer 12 comprises superabsorbent polymer particles, as disclosed in column 6, line 63. A containment layer 11 surrounds the storage layer 12 and is sealed to at least one edge of the upper fibrous layer, as shown in figure 4.

With respect to claim 2, the upper fibrous layer is airlaid, as disclosed in column 4, line 8. The acquisition zone 2 has a lower density than the distribution zone 3, as disclosed in column 4, lines 25-27 and 52-55.

With respect to claim 5, the containment layer 11 is sealed to the distribution zone 3, as disclosed in column 5, lines 41-43.

With respect to claim 6, the containment layer 11 is sealed to the storage layer 12, as disclosed in column 5, lines 1-2.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koczab (5,879,344) in view of Hammons et al. (H1657).

Koczab discloses all aspects of the claimed invention but remains silent as to the composition of the storage layer 12.

Hammons discloses a unitary absorbent structure comprising a lower fibrous liquid storage structure 24, as shown in figure 1. The storage layer 24 comprises an airfelt layer mixed with superabsorbent polymer particles, as disclosed in column 8, lines 49-57. The airfelt layer has a smaller pore size than the acquisition layer 22, which allows the storage structure 24 to suction liquids from the acquisition layer, as disclosed in column 8, lines 35-43.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the storage layer of Koczab from an airlaid layer, as taught by Hammons, to allow the storage structure to suction liquids from the acquisition layer.

With respect to claim 9, airfelt comprises, by definition, a plurality of bonded fibers, and therefore the airfelt layer of Hammons is lightly bonded.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koczab (5,879,344).

Koczab discloses all aspects of the claimed invention but remains silent as to the composition of the containment layer 11. The containment layer 11 functions as the liquid-impermeable backsheet of the absorbent article disclosed by Koczab. It is well-known in the art to construct a liquid-impermeable backsheet of a thermoplastic film, such as polyethylene or polypropylene, because these materials offer suitable liquid

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barrier properties. It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the containment layer 11 of Koczab from a thermoplastic film to provide suitable liquid barrier properties.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (703) 306-5716. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

cla  
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July 30, 2003

  
WEILUN LO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700